

ACTION JUSE-00

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INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	SRPP-00	DS-00	EAP-00	EUR-00	FBIE-00	UTED-00	VC-00
	FRB-00	H-00	TEDE-00	INR-00	LAB-01	L-00	VCE-00
	M-00	DCP-01	NSAE-00	TFBI-00	PER-00	SCT-00	SP-00
	IRM-00	SSO-00	SS-00	TEST-00	ASDS-00	DSCC-00	PRM-00
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 FM AMEMBASSY BERLIN
 TO SECSTATE WASHDC IMMEDIATE 9760
 INFO FRG COLLECTIVE
 EASTERN EUROPEAN POSTS COLLECTIVE
 DEPT OF JUSTICE WASHDC
 AMCONSUL HAMBURG

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SENSITIVE

DEPT FOR EUR/AGS, EUR/PPD, L/LEI, AND S/CT
 JUSTICE FOR TERESA WALLBAUM, MIKE BURKE

E.O. 12958: N/A
 TAGS: PTER, KJUS, PREL, GM
 SUBJECT: TERRORISM: CONVICTED 9/11 TERRORIST
 MOTASSADEQ RELEASED PENDING RETRIAL

REFERENCE: A) BERLIN 271 AND PREVIOUS B) HAMBURG 413
 AND PREVIOUS

1. (U) Message is sensitive but unclassified. Please protect accordingly. Do not disseminate over the Internet.

2. (SBU) Summary: On April 7 the Hamburg Superior Court (Oberlandesgericht) released Mounir el-Motassadeq pending his scheduled June 2004 retrial. Motassadeq had been serving a 15-year sentence on 3,000 counts of accessory to murder and membership in a terrorist organization charges stemming from the 9/11 attacks. Following the acquittal of fellow 9/11 suspect Abdelghani Mzoudi in February 2004 (Ref B), the Federal Supreme Court (Bundesgerichtshof) on March 4, 2004 overturned Motassadeq's conviction and ordered a retrial. (Note: Both the Mzoudi and Motassadeq rulings centered on perceived lack of full access to potentially exculpatory testimony from U.S. interrogations of detained terrorist Ramzi Binalshibh.) Motassadeq is required to remain in Hamburg and report to local police twice weekly during the trial. The release has triggered strong condemnation from Hamburg politicians and police officials; the new Hamburg Interior Minister (Nagel) has

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called for fast-track expulsion from Germany of Mzoudi and Motassadeq
(should his conviction be overturned.)

End Summary.

Court Rules for Release

3. (SBU) The Hamburg Superior Court judges panel noted in their April 7 ruling that although there was still "dringende" (strong) evidence of his membership in a terrorist organization, the evidence regarding his involvement as an accessory in the 3,000 deaths in the 9/11 attacks was downgraded to "hinreichend" (adequate). Motassadeq was therefore released on personal recognition, but must remain in Hamburg and report to local police twice weekly; his passport was impounded to hinder flight. A retrial is scheduled to begin in June 2004. Motassadeq had been convicted by the Superior Court in February 2003 on both the accessory to murder and terrorist organization membership charges and sentenced to the maximum prison term of 15 years; Motassadeq's conviction had been, until overturned, the only case world-wide of a successful 9/11-related prosecution.

4. (SBU) The ruling further stated that the new presumed maximum sentence (if he is found guilty on the membership in a terrorist organization charge) is 1-10 years. The Federal Prosecutors can appeal the release ruling at the Federal Supreme Court level; no appeal decision has as yet been announced by prosecutors. Note: Although not directly referenced in the court's press release, the underlying reason for downgrading the level of evidence in the accessory to murder charge is the lack of access by German courts to the Ramzi Binalshibh interrogation materials.

National/Hamburg Reactions

4. (SBU) In Hamburg, the ruling Christian Democrats (CDU) stated that any eventual release of Motassadeq called into question Germany's resolve in fighting terrorism. The opposition Social Democrats (SPD) also saw the decision as hard to justify, and joined new Interior Minister Nagel (CDU) in calls for a fast-track expulsion procedure for terrorism suspects. Under the CDU/CSU amendment to a new immigration law, foreigners who are suspected of being involved in terrorism can be deported. The level of proof necessary would be less than the preponderance of evidence threshold used in U.S. civil trials. The ruling by the OLGH to release Motassadeq pending a new trial and the acquittal of Mzoudi may give more ammunition for those members SPD who support the CDU/CSU proposal concerning the deportation of suspected terrorists to push the rest of the party to adopt that position. Following the Madrid bombings, Interior Minister Schily is known to have moved closer to the CDU/CSU position. Nevertheless,

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political disagreements persist over who would be able to authorize expulsion on that basis, and whether authorities would be able to hold such persons in preventive detention because they face persecution or maltreatment in their home countries.

5. (SBU) Comment: The debate in Hamburg following the Mzoudi acquittal and potential for a Motassadeq acquittal has focused on a fast-track procedure for expulsion of terrorism suspects. Police/politicians have turned away in their public statements from relying on the judicial process to counter terrorist threats, and toward identification and removal of Islamic militants from Germany. The history of the 9/11 cells in Hamburg, and the recent Mzoudi/Motassadeq developments, have generated a local debate on how to identify individuals and thresholds/procedures for removal; Hamburg sees itself on the leading edge of a wider national debate on this issue. Recent press interviews by new Interior Minister Nagel regarding

the residence of up to 200 Islamic militants in Hamburg have provided impetus to this discussion, as has the application by Mzoudi to regain his student status at a local technical college. End Comment.

6. (U) This message has been coordinated with Embassy Berlin.

COATS

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